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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,552	04/13/2004	William J. Kennedy	05918-031009 / VGCP 2966	6249
26161	7590	06/03/2005	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			EASHOO, MARK	
		ART UNIT		PAPER NUMBER
				1732

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/824,552	KENNEDY ET AL.
	Examiner	Art Unit
	Mark Eashoo, Ph.D.	1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 May 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 61-97 is/are pending in the application.

4a) Of the above claim(s) 61-83 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 84-97 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_

**DETAILED ACTION*****Election/Restrictions***

Claims 61-83 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected claim grouping, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 26-NOV-2004.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 84-87, 92-95, and 97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (US Pat. 4,794,028) or Fischer (US Pat. 4,872,243) in view of Studer (US Pat. 3,230,134).

Fischer '028 teaches the basic claimed process for making a strip-hook fastener, comprising: a base portion (Fig. 4); hook-form projections extending from the base portion (2:48-61 and Fig. 4); providing a cooled rotating forming roller having hook-forming cavities in its periphery to solidify the resin therein (2:20-47 and Figs. 2, 3, 6, and 7); applying molten resin to the forming roller (5:33-51); wherein a forming roller and pressure roll define a nip (Fig. 2); after cooling the molten resin, removing/stripping the hook-form projections from the cavities without opening the cavities (2:35-47); and passing the fastener structure about a stripping roll which is positioned at a point such that the web travel along a substantial arc along the forming roller (Fig. 3).

Fischer '243 teaches the basic claimed process for making a strip-hook fastener, comprising: a base portion (Fig. 4); hook-form projections extending from the base portion (2:47-59 and Fig. 4); providing a cooled rotating forming roller having hook-forming cavities in its periphery to solidify the resin therein (2:20-46 and Figs. 2, 3, 6, and 7); applying molten resin to the forming roller (5:30-48); wherein a forming roller and pressure roll define a nip (Fig. 2); after cooling the molten resin, removing the hook-form projections from the cavities without opening the cavities (2:35-47); and passing the fastener structure about a stripping roll which is positioned at a point such that the web travel along a substantial arc along the forming roller (Fig. 3).

Neither Fischer '028 nor Fischer '243 teach introducing a running length of a sheet material to a molten plastic under pressure wherein the fabric/screen becomes an integral part of a base portion. However, Struder teaches introducing a running length of a sheet material to a molten plastic under pressure wherein the sheet becomes an integral part of a base portion (2:14-26 and Figs. 1-2 and 6). It is noted that the sheet material of Studer is delivered to the resin at the point that the molten resin is

Art Unit: 1732

applied to rollers (Fig. 1) and also progresses along at least a portion of a roll before being delivered to the molten resin (Fig. 1). Either Fischer '028 or Fischer '243 is combinable with Studer because they are from the same field of endeavor, namely, forming plastic webs having integral upstanding projections thereon. At the time of invention, a person having ordinary skill in the art would have found it obvious to have provided a sheet material, as taught by Studer, in the process of either Fischer '028 or Fischer '243, in order to provide a reinforced support or base web.

Either Fischer '028 or Fischer '243 teach fastener elements, configured to engage loops, that overhang a continuous base layer (Figs. 2 and 4).

Either Fischer '028 or Fischer '243 teach a coextensive base layer (Figs. 2 and 4). Studer teaches a coextensive sheet material that forms a backing (Figs. 1-5). Fischer and Studer would have been combined for the same reasons as set forth above.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 84-97 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 5,744,080. Although the conflicting claims are not identical, they are not patentably distinct from each other because the same subject matter is claimed by U.S. Patent No. 5,744,080. Specifically, Claims 1-13 of U.S. Patent No. 5,744,080 teach: a strip-like hook fastener product; introducing resin at a pressure nip into cavities of forming roller (claim 9); introducing a sheet/preformed material (claims 1 and 6); cooling/solidifying the resin on the forming roll (claims 1 and 7); stripping/withdrawing the fastener structure from a molding/forming roll (claims 1 and 6); various sheet materials including paper, foam, non-woven fabric (claim 2); and a loop material as the sheet/backing material (claim 3).

U.S. Patent No. 5,744,080 does not teach that the base and sheet layers are continuous, coextensive or that the fastener elements/projections overhang the base. Nonetheless, if it is not intrinsic

Art Unit: 1732

that the base and sheet layers are continuous, coextensive or that the fastener elements/projections overhang the base then these would have been obvious modifications to a person of ordinary skill in the art in order to provide a strong uniform fastener product having fasteners that have hook, barbs, or caps that increase the mechanical interlocking strength of the fastener product.

Claims 84-97 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 5,744,080. Although the conflicting claims are not identical, they are not patentably distinct from each other because the same subject matter is claimed by U.S. Patent No. 5,744,080. Specifically, Claims 1-13 of U.S. Patent No. 5,744,080 teach: a strip-like hook fastener product; introducing resin at a pressure nip into cavities of forming roller (claim 9); introducing a sheet/preformed material (claims 1 and 6); cooling/solidifying the resin on the forming roll (claims 1 and 7); stripping/withdrawing the fastener structure from a molding/forming roll (claims 1 and 6); various sheet materials including paper, foam, non-woven fabric (claim 2); and a loop material as the sheet/backing material (claim 3).

Claims 1-13 of U.S. Patent No. 5,744,080 does not teach that the base and sheet layers are continuous, coextensive or that the fastener elements/projections overhang the base. Nonetheless, if it is not intrinsic that the base and sheet layers are continuous, coextensive or that the fastener elements/projections overhang the base then these would have been obvious modifications to a person of ordinary skill in the art in order to provide a strong uniform fastener product having fasteners that have hook, barbs, or caps that increase the mechanical interlocking strength of the fastener product.

Claims 84-97 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 5,260,015. Although the conflicting claims are not identical, they are not patentably distinct from each other because the same subject matter is claimed by U.S. Patent No. 5,260,015. Specifically, Claims 1-20 of U.S. Patent No. 5,260,015 teach: a strip-like hook fastener product; introducing resin at a pressure nip into cavities of forming roller (claims 1 and 11); introducing a sheet/preformed material (claims 1 and 6); cooling/solidifying the resin on the forming roll (claims 1 and 11); stripping/withdrawing the fastener structure from a molding/forming roll (claims 1 and 11); various sheet materials including paper, foam, non-woven fabric (claim 2-7 and 12-17); and a loop material as the sheet/backing material (claims 8 and 18).

Claims 1-20 of U.S. Patent No. 5,260,015 does not teach that the base and sheet layers are continuous, coextensive or that the fastener elements/projections overhang the base. Nonetheless, if it is not intrinsic that the base and sheet layers are continuous, coextensive or that the fastener elements/projections overhang the base then these would have been obvious modifications to a person of

Art Unit: 1732

ordinary skill in the art in order to provide a strong uniform fastener product having fasteners that have hook, barbs, or caps that increase the mechanical interlocking strength of the fastener product.

***Response to Arguments***

Applicant's arguments filed 11-MAY-2005 have been fully considered but they are not persuasive, because:

A.) Applicant's argument that a high degree of sensitivity regarding process condition at the nip is noted. However, the original disclosure suggests that only "certain cautions" would be present by modifying an old process does not suggest that such modifications would be out of the ordinary risks taken by ordinary artisans when making normal advances in the art. Furthermore, there are no limitations in the instant claim that suggests special cautions are used during the instant process and therefore applicant's allegations of criticality/sensitivity is not supported by evidence on the record.

B.) Applicant's arguments directed to the double patenting rejections are noted and the rejection will be withdrawn upon the filing of the terminal disclaimers.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Eashoo, Ph.D. whose telephone number is (571) 272-1197. The examiner can normally be reached on 7am-3pm EST, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1732

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Eashoo, Ph.D.  
Primary Examiner  
Art Unit 1732

May 31, 2005  
me

